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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,275	01/19/2001	Toshio Kobayashi	SHC0104	1331

7590 10/09/2003
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EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/766,275	Applicant(s) KOBAYASHI ET AL.	
	Examiner John J. Guarriello	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/11/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) 4,5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

15. The Examiner acknowledges the amendment of 6/26/2003 and the terminal disclaimer.

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

17. Claims 1-3, 6 are provisionally rejected under 35 U.S.C. 102(e) as being anticipated by copending Application No. 09/613814 which has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the copending application, it would constitute prior art under 35 U.S.C. 102(e), if published under 35 U.S.C. 122(b) or patented. This provisional rejection under 35 U.S.C. 102(e) is based upon a presumption of future publication or patenting of the copending application. It is the Examiner's position that the elastically stretchable sheet of a fibrous assembly appears to be indistinguishable from the claims of the instant invention.

This provisional rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the copending application was derived from the inventor of

this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131. This rejection may not be overcome by the filing of a terminal disclaimer. See *In re Bartfeld*, 925 F.2d 1450, 17 USPQ2d 1885 (Fed. Cir. 1991).

Claim Rejections - 35 USC § 103

18. Claims 1-3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strack et al. 5,681,645 in view of Morman 5,116,662.

Strack describes laminate material with stretchability and recovery, breathability and barrier properties, (see abstract). Strack describes a non-woven web elastomeric web having at least one web of textile material discontinuously bonded to each side, (see abstract). Strack describes the laminate with at least two textile webs, a non-elastic textile web with stretch and recovery characteristics, and a textile web with non-woven elastomeric web properties, (column 5, lines 58-67). Strack describes the various kinds of elastomeric web materials, (column 6, lines 22-67). Strack describes the use of

adhesive which laminates the webs together so that the elasticity of the laminate will not be interfered, i.e., interfere with recoverability, (column 9, lines 35-61). Strack describes the use for the laminate, garment with thermal insulation and a dirt barrier to protect the wearer, while having breathability for comfort, (column 11, lines 42-46). Strack differs from the claimed invention because it is silent about orthogonal stretchability and the amounts of the components of the ethylene polymer.

Morman describes multi-direction stretch composite elastic material including at least one elastic sheet which means that the sheet is elongatable about 60%, i.e. stretched, (column 1, lines 60-68). Morman describes "nonelastic" as not falling in the definition of elastic, (column 2, lines 11-14). Morman describes a composite material which refers to at least one sheet which is stretched and one necked (non-elastic) material, which are joined together in at least three locations corresponding to the instantly claimed binding spots, (column 3, lines 30-45). Morman describes elastic sheets, (column 7, lines 57-68; column 8, lines 1-63). Morman describes the non-elastic

materials are nonwovens made of polyolefins and similar polymers including ethylene copolymers, (column 4, lines 44-64).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Strack with the web material of Morman so that the necked material, see Figure 2B, that the binding spots correspond between the sheet and the fibrous assembly and are similar in effect to the bonding locations of the two layers of elastic and non-elastic sheet motivated with the expectation that improved properties of resilience and stretch and recovery, (column 4, lines 67-68), are evident when the binding spots overlap. Regarding the composition of the ethylene copolymer Morman describes blends of polyolefin material which is incorporated by reference in 4,663,220 (column 11, lines 55-68; column 13, lines 40-57; of '220), which when blended under appropriate conditions, (column 8, lines 34-49) one of ordinary skill in the art would be able to optimize the amounts of the ethylene propylene butene copolymers to join the two layers. Regarding orthogonality it would have been obvious to one of ordinary skill in the art to approximate motivated with

the expectation that Strack describes (machine and cross direction, column 9, lines 14-23, corresponding to orthogonal stretchability) power recoverability is added to the materials to the extent they stretch, (column 9, lines 18-19).

Applicant's arguments regarding the stretching the laminate where the fibers in the fibrous assembly break apart have been considered. It is the Examiner's position that the invention taken as a whole would be obvious to one of ordinary skill in the art especially since there is no clear evidence supplied by applicant to support applicant's discussion of page 6 of the remarks of the response.

Double Patenting

19. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937,

214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

20. Claims 1-3, 6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of copending Application No.

09/613814. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the correspondence of the relative binding spots of the

elastic sheet of '814 in reference to the inelastic fibrous sheet so that the bonding zones (similar to binding spots) would be expected to improve the the similar properties of flexibility, see abstract.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

21. Applicant's submission of the terminal disclaimer for 09/941566 and 09/812299 has been submitted and is proper. The double patenting rejections are withdrawn.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris , can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

September 23, 2003



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700